



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bilt-Rite Contractors, Inc.

File: B-234192.2

Date: March 10, 1989

DIGEST

Protest of bid opening procedures employed by an architect-engineer firm on behalf of a local, nonprofit entity seeking bids for the new construction of housing for the elderly, a project financed by a federal loan, is dismissed because procurement is not by or for a "federal agency" and therefore not within the General Accounting Office's bid protest jurisdiction.

DECISION

Bilt-Rite Contractors, Inc., protests the failure to hold a public bid opening at the time and place set forth in the solicitation for Project No. PA26-T841-007/034-EH267-L8-WAH, for the new construction of housing for the elderly. The procurement was conducted by an architect-engineer firm on behalf of the owner of the project, Antonian Limited, a nonprofit entity, which was to receive financial assistance from the United States Department of Housing and Urban Development (HUD) in the form of a direct loan.

For the reasons stated below, the protest is dismissed.

We dismissed Bilt-Rite's initial protest as one involving the award of a subcontract, based on the information presented, and therefore not for consideration on the merits under our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1988). Bilt-Rite requested that we reconsider our dismissal on the bases that were it selected for award, it would serve as the prime contractor for this construction project, not as a subcontractor, and that the procurement is "by or for" the federal government.

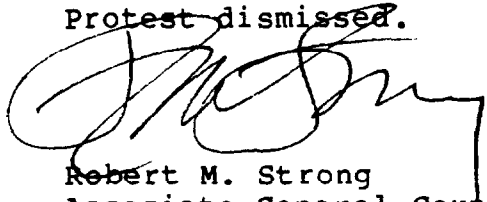
In response to the protest, HUD has advised us, as indicated above, that the procurement was conducted by an architect-engineer firm on behalf of the owner, a local, nonprofit entity which would receive financial assistance in the form

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of a loan from HUD. HUD did not issue the solicitation and would not be a party to the resulting contract even though it does require the loan recipient to observe certain requirements, such as the use of competitive bidding, and as the lender does reserve the right to review and approve the contract award.

Our jurisdiction to resolve bid protests is limited to those solicitations which are issued by or for a "federal agency." 4 C.F.R. §§ 21.0(c) and 21.1(a). A procurement by a local, nonprofit entity, which also is the recipient of a federal loan is not one by or for a "federal agency." Blaze Construction, Inc.--Request for Reconsideration, B-229611.2 et al., Dec. 8, 1987, 87-2 CPD ¶ 568 (dismissals of protests of procurements by local Indian housing authority affirmed as not by a "federal agency" even though contract may be funded by HUD loan). Since this procurement is therefore not within our bid protest jurisdiction, Bilt-Rite's protest is dismissed.

~~Protest dismissed.~~

A handwritten signature in black ink, appearing to read 'R. M. Strong', is written over the text 'Protest dismissed.' and extends downwards towards the typed name.

Robert M. Strong
Associate General Counsel